

PUBLIC ACTS, 1999

CHAPTER NO. 478

HOUSE BILL NO. 677

By Representatives Kisber, Hargrove, Mr. Speaker Naifeh and Representatives Lois DeBerry, Rinks, Williams, Arriola, McDonald, Armstrong, Larry Turner, Stulce, Sands, Davidson, Pinion, Sherry Jones, Lewis, Ridgeway, Bone, Robinson, Ferguson, Brooks, Tindell, Eckles, West, Hood, Caldwell, Fraley, Brenda Turner, Maddox, Odom, Pruitt, Winningham, McMillan, Langster, Hargett, Pleasant, Ronnie Cole, Cooper, Ford, Fitzhugh, White, Walley, Newton, Goins, Todd, Walker, Bowers, Head, Dunn, David Davis, Montgomery, McDaniel, Sargent, Boyer, Bittle, Scroggs

Substituted for: Senate Bill No. 1116

By Senators Cooper, Cohen, Burks

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 4, to establish a method by which residential customers may object to receiving telephone solicitation calls to avoid receiving such calls and to regulate such telephone solicitation calls.

WHEREAS, the use of the telephone to market goods and services to residential customers is pervasive due to the increased use of cost-effective telephone solicitation techniques; and

WHEREAS, over thirty thousand (30,000) businesses actively telemarket goods and services to business and residential customers; and

WHEREAS, every day, over three hundred thousand (300,000) solicitors place calls to more than eighteen million (18,000,000) Americans, including citizens of this State; and

WHEREAS, telephone solicitations can be an intrusive and relentless invasion of the privacy and peacefulness of any residence; and

WHEREAS, citizens of this State are outraged over the proliferation of telephone solicitation calls to their residences from telemarketers across the country; and

WHEREAS, individuals' privacy rights and commercial freedom of speech must be balanced in a way that accommodates both the privacy of individuals and legitimate telephone solicitation practices; and

WHEREAS, it is in the public interest to establish a mechanism under which individual citizens of this State can decide whether or not to receive telemarketing calls in their residences; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Authority" means the Tennessee regulatory authority.

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(2) "Caller identification service" means telephone service which notifies telephone subscribers of the telephone number of incoming telephone calls.

(3) "Local exchange company" includes telecommunications service providers as such term is defined in Tennessee Code Annotated, § 65-4-101, competing telecommunications service providers as such term is defined in Tennessee Code Annotated, § 65-4-101, telephone cooperatives, and cellular or other wireless telecommunications providers.

(4) "Person" means a natural person, individual, partnership, corporation, trust, estate, incorporated or unincorporated association and any other legal or commercial entity however organized and wherever located that telemarkets to citizens located within the State of Tennessee.

(5) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living, residing or visiting such person.

"Telephone solicitation" also does not include any voice communication over a telephone to any residential subscriber in this state who is an existing customer. For the purposes of this act an existing customer shall include a residential subscriber with whom the person or entity making a telephone solicitation has had a prior relationship within the prior twelve (12) months.

"Telephone solicitation" also does not include occasional and isolated voice communications over a telephone to a residential subscriber if such communication is made on behalf of a business if:

- (1) a direct employee of the business makes the voice communication;
- (2) the communication is not made as part of a telecommunications marketing plan;
- (3) the business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;
- (4) the business does not sell or engage in telemarketing services;
- (5) the business does not make more than three (3) such voice communications in any one (1) calendar week.

(6) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, originating from Tennessee or elsewhere but does not include voice communications to any residential subscriber with that subscriber's prior express permission.

(7) "Telephone solicitation" also does not include a voice communication over a telephone to a residential subscriber if such communication is made on behalf of a not-

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for-profit organization exempt from paying taxes under Section 501(c) of the Internal Revenue Code if a bona fide member of the exempt organization makes such voice communication.

SECTION 2. Any person or entity who makes a telephone solicitation to any residential subscriber in this State shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents. Without the permission of the residential subscriber, no person or entity who makes a telephone solicitation shall call such subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m., prevailing time.

SECTION 3. No person or entity who makes a telephone solicitation to the telephone of a residential subscriber in this State shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service.

SECTION 4. No person or entity shall knowingly make or cause to be made any telephone solicitation to any residential subscriber in this State who has given notice to the authority, in accordance with regulations promulgated pursuant to this act, of such subscriber's objection to receiving telephone solicitations.

SECTION 5. (a) The authority shall establish and provide for the operation of a database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. It shall be the duty of the authority to have such database in operation no later than July 1, 2000. Such database may be operated by the authority or by another entity under contract with the authority.

(b) No later than January 1, 2000, the authority shall promulgate regulations which:

(1) require each local exchange company to semi-annually inform its residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations;

(2) specify the methods by which each residential subscriber may give notice to the authority or its contractor of such subscriber's objection to receiving such solicitations or revocation of such notice;

(3) specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(4) specify the methods by which such objections and revocations shall be collected and added to the database;

(5) specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database; and

(6) specify such other matters that the authority deems necessary to implement this act.

(c) If, pursuant to 47 U.S.C. Section 227(c) (3), the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who

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object to receiving telephone solicitations, the authority shall include the part of such single national database that relates to Tennessee in the database established under this act.

(d) A person or entity desiring to make telephone solicitations shall be charged a fee of five hundred dollars (\$500.00) per year payable to the authority for access to or for paper or electronic copies of the database established under this act. Unlimited electronic copies of the database will be provided to persons or entities who pay the fee for such access. A fee shall be established by rule of the authority for paper copies of the database.

(e) Information contained in the database established under this act shall not be subject to public inspection or disclosure under Title 10, Chapter 7. Such information shall be used only for the purpose of compliance with this act or in a proceeding or action under this act.

(f) The authority is authorized to initiate proceedings relative to a violation of this act or any rules and regulations promulgated pursuant to this act. Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation, and to seek additional relief in any court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and to protect consumers. Each violation may include each telephone solicitation made to a residential subscriber that was on the list that the violator telephoned. The authority is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of this act, in accordance with the provisions of Title 65. All civil penalties assessed pursuant to the provisions of this act shall be deposited in the public utilities account in the State Treasury.

(g) No later than January 1, 2000, the authority shall hold a hearing to receive testimony from entities subject to the provisions of this act who employ independent contractors to make telephone solicitations to determine if the authority should authorize such independent contractors to access the database at a reduced fee. The authority is authorized to allow such access and develop a fee schedule for access to the database by independent contractors and the entity which employs such contractors.

(h) As supplementary to the authority granted in this act, the Attorney General, at the request of the authority, may bring an action in any court of competent jurisdiction in the name of the State against any person or entity relative to a violation of this act or any rules and regulations promulgated pursuant to this act. The courts are authorized to issue orders and injunctions to restrain and prevent violations of the act, and such orders and injunctions shall be issued without bond. In any action commenced by the State, the courts are authorized to order reasonable attorneys' fees and investigative costs be paid by the violator to the State. An action brought by the Attorney General may also include other causes of action such as but not limited to a Tennessee Consumer Protection Act of 1977 claim.

SECTION 6. The remedies, duties, prohibitions, and penalties of this act are not exclusive and are in addition to the Consumer Telemarketing Protection Act of 1990 and all other causes of action, remedies, and penalties provided by law.

SECTION 7. No provider of telephone caller identification service shall be held liable for violations of this act committed by other persons or entities.

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SECTION 8. It shall be a defense in any action or proceeding brought under this act that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this act.

SECTION 9. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding Sections 1 through 8 of this act as a new part.

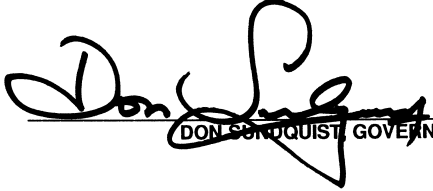
SECTION 10. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: May 28, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON SUNDQUIST, GOVERNOR